



1 THOMAS R. BURKE (State Bar No. 141930)  
 2 SUSAN E. SEAGER (State Bar No. 204824)  
 3 DAVIS WRIGHT TREMAINE LLP  
 4 One Embarcadero Center, Suite 600  
 5 San Francisco, California 94111-3611  
 6 Telephone: (415) 276-6500  
 7 Facsimile: (415) 276-6599  
 8  
 9 JAYASHRI SRIKANTIAH (State Bar No. 189566)  
 10 ALAN L. SCHLOSSER (State Bar No. 49957)  
 11 AMERICAN CIVIL LIBERTIES UNION  
 12 FOUNDATION OF NORTHERN CALIFORNIA  
 13 1663 Mission Street, Suite 460  
 14 San Francisco, California 94103  
 15 Telephone: (415) 621-2493  
 16 Facsimile: (415) 255-8437  
 17

ORIGINAL  
FILED

APR 22 2003

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 Attorneys for Plaintiffs Rebecca Allison Gordon,  
 11 Janet Amelia Adams and American Civil Liberties  
 12 Union Foundation of Northern California

E-filing

DAVIS WRIGHT TREMAINE LLP

12 IN THE UNITED STATES DISTRICT COURT  
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

MEJ

14 SAN FRANCISCO DIVISION

C03

1779

15 REBECCA ALLISON GORDON, JANET  
 16 AMELIA ADAMS and AMERICAN CIVIL  
 17 LIBERTIES UNION FOUNDATION OF  
 18 NORTHERN CALIFORNIA,

18 Plaintiffs,

19 v.

20 FEDERAL BUREAU OF INVESTIGATION,  
 21 UNITED STATES DEPARTMENT OF  
 22 JUSTICE and TRANSPORTATION  
 23 SECURITY ADMINISTRATION,

23 Defendants.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF FOR  
VIOLATION OF THE FREEDOM OF  
INFORMATION ACT, 5 U.S.C. § 552  
et seq. AND THE PRIVACY ACT, § 552a  
et seq.

## INTRODUCTION

1. Rebecca Allison Gordon, Janet Amelia Adams, and the American Civil Liberties Union Foundation of Northern California (“ACLU-NC”) (collectively referred to as “Plaintiffs”), bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, and the Privacy Act, 5 U.S.C. § 552a *et seq.*, to enjoin the Federal Bureau of Investigation (“FBI”) and the Transportation Security Administration (“TSA”) (collectively referred to as “Defendants”), from continuing to improperly withhold agency records regarding the “no fly” list and other transportation watchlists, as well as agency records concerning Plaintiffs Gordon and Adams. Defendant United States Department of Justice (“DOJ”) is sued in its capacity as the parent agency of Defendant FBI.

2. Plaintiffs Gordon and Adams are long-time peace activists and co-publishers of *War Times*, a newspaper critical of the Bush Administration’s domestic “war on terrorism.” Numerous air passengers, including Plaintiffs Adams and Gordon, have been told by airline officials or law enforcement that their names may appear on a secret “no fly” list or other transportation watchlists. Recently-obtained San Francisco International Airport (“SFO”) records reveal that, at SFO alone, hundreds of air travelers have been told that their names may appear on the “no fly” list or other watchlists.

3. Recent press accounts and the limited information that is publicly available confirm the existence of a “no fly” list. However, the government has released virtually no information about the list or any other watchlist. The public does not know, for instance, how an air traveler can request that her name be removed from the “no fly” list, or whether the government follows procedures to ensure the accuracy of such lists. Without even basic information about the “no fly” list or other watchlists, the public cannot evaluate the government’s decision to use such lists. Plaintiffs seek agency records that are critical to the public’s ability to assess the use of the “no fly” list and other watchlists.

## JURISDICTION

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552a(g)(1), 5 U.S.C. § 701-706, and 28 U.S.C. § 1331.

DAVIS WRIGHT TREMAINE LLP

VENUE

5. Venue in the Northern District of California is proper under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552a(g)(5) and 28 U.S.C. § 1391. Independently, venue is proper in the Northern District of California in that Plaintiffs Gordon and Adams are residents of San Francisco, California and Plaintiff ACLU-NC maintains its office in San Francisco, California.

PARTIES

6. Plaintiff Rebecca Allison Gordon is a U.S. citizen and a resident of San Francisco. She is a long-time activist for peace and civil rights. Ms. Gordon is currently a graduate theology student at the Starr King School for the Ministry in Berkeley, California. She is also a writer and a co-publisher of *War Times*, a newspaper that first began publication after September 11, 2001. From its inception, *War Times* has published articles and commentary critical of the Bush Administration's restrictions on civil liberties as part of its domestic "war on terrorism." *War Times* currently has a circulation of approximately 125,000 readers per month. A true and correct copy of the current edition of *War Times* is attached as Exhibit 1, and is also available at the War Times website, [www.war-times.org](http://www.war-times.org).

7. Plaintiff Janet Amelia Adams is a U.S. citizen and a resident of San Francisco, California. She works as a consultant assisting advocacy groups and progressive political candidates with strategic planning. Like Ms. Gordon, Ms. Adams is a long-time activist for peace, a community organizer and a co-publisher of *War Times*. She has also been an outspoken critic of the Bush Administration's anti-civil liberties policies, and has authored articles opposing the Administration's war against Iraq.

8. Plaintiff ACLU-NC is a nonprofit public interest organization working to increase citizenship participation in governance issues. The ACLU-NC, an affiliate of the national American Civil Liberties Union, was founded in 1934 and has over 32,000 members. The ACLU-NC routinely publishes periodicals, news briefings, right-to-know documents, and other materials that are disseminated widely to the public. The ACLU-NC also disseminates information through its website ([www.aclunc.org](http://www.aclunc.org)), which addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains numerous documents that relate

DAVIS WRIGHT TREMAINE LLP

1 to the issues on which the ACLU-NC is focused. The ACLU-NC further disseminates information  
2 through a newsletter that has been in operation since 1936, and that is distributed bi-monthly to  
3 over 30,000 households in Northern California.

4 9. Defendant FBI is a federal agency within the meaning of 5 U.S.C. § 552(f) and  
5 5 U.S.C. § 552a(a)(1); Defendant DOJ, as the parent agency of Defendant FBI, is also a federal  
6 agency within the meaning of 5 U.S.C. § 552(f) and 5 U.S.C. § 552a(a)(1).

7 10. Defendant TSA is a federal agency within the meaning of 5 U.S.C. § 552(f) and  
8 5 U.S.C. § 552a(a)(1).

### 9 FACTS

10 11. On August 7, 2002, Plaintiffs Gordon and Adams arrived at San Francisco  
11 International Airport (“SFO”) for an American Trans Air (“ATA”) flight to Boston via Chicago.  
12 When they checked in for their flight at the ATA counter, an ATA agent told them that their  
13 names appeared on a “no fly” list. San Francisco Police Department (“SFPD”) officers arrived at  
14 the scene and detained Plaintiffs Gordon and Adams. The officers informed them that the police  
15 would have to check whether their names appeared on a “master list.” Although Plaintiffs Gordon  
16 and Adams were permitted to fly, their boarding passes were marked with a red “S,” which  
17 subjected them to additional searches at SFO. Plaintiff Adams was again subjected to additional  
18 searches at Logan International Airport in Boston during her return flight to SFO.

### 19 SFO RECORDS CONFIRM EXISTENCE OF “NO FLY” LIST 20 AND INVESTIGATION OF PLAINTIFFS GORDON AND ADAMS

21 12. In response to the August 7th incident, Plaintiff ACLU-NC, on behalf of Plaintiffs  
22 Gordon and Adams, sent a letter to SFO on November 14, 2002, requesting records about the  
23 incident and the “no fly” list under the California Public Records Act. Attached as Exhibit 2 is a  
24 true and correct copy of this letter. John L. Martin, SFO Airport Director, responded on  
25 November 22, 2001 by providing documentation confirming the existence of a “no fly” list used  
26 by the FBI. The documentation also confirmed that on August 7, 2002, law enforcement  
27 authorities checked Plaintiffs Gordon and Adams’s names against a master “FBI list.” Attached as  
28 Exhibit 3 is a true and correct copy of the letter response from Mr. Martin and its enclosures.

13. On November 14, 2002, Plaintiff ACLU-NC, on behalf of Plaintiffs Gordon and Adams, sent a letter to SFPD requesting records under the California Public Records Act about the August 7th incident. SFPD did not release any information in response to this request. Attached as Exhibit 4 is a true and correct copy of the letter requesting records from SFPD.

#### **FOIA AND PRIVACY ACT LETTER REQUESTS TO FBI AND TSA**

14. On December 12, 2002, Plaintiff ACLU-NC, on behalf of Plaintiffs Gordon and Adams and the ACLU-NC, sent letters to the FBI (to its San Francisco office and Washington, D.C. headquarters) and to TSA (in Washington, D.C.). Attached as Exhibits 5, 6, 7, 8, 9 and 10 are true and correct copies of this correspondence. Through this correspondence, Plaintiffs sought the disclosure of the following records:

- a. All records prepared, collected, or maintained by the FBI, TSA, and/or Department of Transportation ("DOT") in connection with the placement of Ms. Gordon's or Ms. Adams' name or other identifying information on any lists of individuals considered potential threats to transportation or national security, including lists maintained pursuant to the Aviation Transportation Security Act of 2001 (hereinafter "watchlists").
- b. All records prepared, collected, and/or maintained by FBI, DOT and/or TSA about the placement of Ms. Gordon's or Ms. Adams' name or identifying information on the list commonly referred to as the "no fly" list.
- c. All records, including memoranda of understanding and correspondence, transmitted between DOT, TSA, and/or the FBI and any airport or local police department, including SFO and SFPD, regarding sharing or gathering information related to a "no fly" list or any watchlist.
- d. All records, including memoranda, policy directives, and guidances, issued by FBI, DOT, and/or TSA and distributed to any airport or local police department, including SFO or SFPD, regarding the "no fly" list or any watchlist.
- e. All records, including policy directives, procedures, and guidances, regarding access to the "no fly" list and any watchlists by any individual or agency, including airline or airport employees.
- f. All records, including policy directives, procedures, and guidances, concerning how individuals are placed on and removed from the "no fly" list or any watchlist.
- g. All records, including, policy directives, procedures, and guidances, regarding whether political beliefs, membership in groups, or any other First Amendment activity is a factor in placing individuals on the "no fly" list or any watchlist.

- h. All records, including policies, procedures, guidances, and evaluations, regarding the use and accuracy of the “no fly” list or any watchlist and any procedures to correct errors or remove names from those lists.
- i. All files and records maintained by the FBI, DOT and/or TSA indexed or maintained under the name or identifying information of Plaintiff Adams.
- j. All files and records maintained by the FBI, DOT and/or TSA indexed or maintained under the name or identifying information of Plaintiff Gordon.
- k. Agency records containing information about the number of names on the “no fly” list and all watchlists as of the date of this request.
- l. Agency records containing information about the number of times since the creation of the “no fly” list and effective date of the Aviation Transportation Security Act (ATSA) that the DOT, TSA, FBI, or local or state law enforcement, including SFPD, has stopped or questioned individuals at airports, including SFO, because those individuals were believed to be on the “no fly” list or any watchlist.
- m. Agency records containing information about the number of times since the creation of the “no fly” list or the ATSA’s effective date that an individual was incorrectly identified (even briefly) as being on the “no fly” list or any watchlist.
- n. Agency records containing information about the name(s) of the agency or agencies that maintain(s) the “no fly” list or any watchlist.

**“NO RECORDS” DENIALS BY FBI AND NO RESPONSE FROM TSA**

15. On December 19, 2002, in letters signed by John A. Lohse, Chief Division Counsel of the FBI’s San Francisco office, the FBI notified Plaintiffs that the FBI had located “no records” regarding Plaintiffs Gordon and Adams individually, or otherwise responsive to Plaintiffs’ December 12 requests. Mr. Lohse referred Plaintiffs’ request for records concerning the “maintenance of ‘no fly lists’ and ‘watchlists’” to the FBI’s Washington, D.C. office. Attached as Exhibits 11 and 12 are true and correct copies of the FBI’s letter responses.

16. On January 2, 2003, Defendant TSA acknowledged receipt of Plaintiffs’ records requests and assigned identification numbers to them. Attached as Exhibits 13 and 14 are true and correct copies of the TSA’s letter responses.

17. By letters dated January 6, 16, and 28, 2003, signed by David M. Hardy, Section Chief, Records Information and Dissemination Section of the Records Management of the FBI in its Washington, D.C. office, Plaintiffs were notified that the FBI had located “no records”

1 responsive to their December 12th requests. Attached as Exhibits 15, 16, and 17 are true and  
2 correct copies of the FBI's letter responses.

3 18. On February 14, 2003, through counsel, Plaintiffs sent a certified letter to the FBI  
4 appealing the FBI San Francisco office's denial of their FOIA and Privacy Act requests. In this  
5 correspondence, Plaintiffs observed that the FBI's blanket "no record" response seemingly ignored  
6 "the full scope" of the FOIA requests which expressly sought agency records "regarding the  
7 existence of any 'no fly' list or 'any watchlist' as well as 'policy directives, procedures and  
8 guidances' concerning how individuals who are placed may be removed from the 'no fly' list or  
9 any watchlist' among other documents." Attached as Exhibits 18 and 19 are true and correct  
10 copies of this correspondence.

11 19. On March 5, 2003, through counsel, Plaintiffs sent certified letters to the FBI  
12 appealing the FBI Washington, D.C. headquarters' denial of their FOIA and Privacy Act requests.  
13 Again in this correspondence, Plaintiffs observed that the FBI's blanket "no record" response  
14 seemingly ignored "the full scope" of the FOIA requests which expressly sought agency records  
15 "regarding the existence of any 'no fly' list or 'any watchlist' as well as 'policy directives,  
16 procedures and guidances' concerning how individuals who are placed may be removed from the  
17 'no fly' list or 'any watchlist' among other documents." Attached as Exhibits 20 and 21 are true  
18 and correct copies of this correspondence.

19 20. On March 21, 2003, through counsel, Plaintiff ACLU-NC sent letters to Defendant  
20 TSA responding to TSA's earlier letter of February 21, 2003, in which Defendant TSA denied  
21 Plaintiff ACLU-NC's request to be granted status as a representative of the news media for  
22 purposes of waiving search and review fees. Attached as Exhibit 22 is a true and correct copy of  
23 Defendant TSA's February 21, 2003 letter. Through a letter sent via facsimile and U.S. mail on  
24 March 21, 2003, Plaintiff ACLU-NC appealed TSA's determination that Plaintiff ACLU-NC  
25 should not be placed in the category of news media requester. In its appeal letter, Plaintiff ACLU-  
26 NC clarified that it "qualifies as a news media representative because it disseminates information  
27 to the public through its periodic newsletter, published reports, web site, news conferences and  
28 interviews," and provided detailed support for this contention. Attached as Exhibit 23 is a true



1 and correct copy of Plaintiff ACLU-NC's March 21, 2003 appeal letter. By a separate letter, also  
 2 sent via facsimile and U.S. mail on March 21, 2003, Plaintiff ACLU-NC also provided  
 3 clarification, per Defendant TSA's request, as to why Plaintiff ACLU-NC qualifies for a waiver of  
 4 duplication costs because disclosure of the information sought by Plaintiffs' requests is in the  
 5 public interest. Attached as Exhibit 24 is a true and correct copy of Plaintiff ACLU-s March 21,  
 6 2003 clarification letter.

7 21. On March 28, 2003, Defendant FBI acknowledged receipt of Plaintiffs' appeal  
 8 letters regarding the FBI San Francisco office's denial of their FOIA requests. Attached as  
 9 Exhibits 25 and 26 are true and correct copies of this correspondence.

10 22. On April 3, 2003, Defendant FBI acknowledged receipt of Plaintiffs' appeal letters  
 11 regarding the FBI Washington, D.C. headquarters' denial of their FOIA requests. Attached as  
 12 Exhibits 27, 28, 29, and 30 are true and correct copies of this correspondence.

### 13 **RECORDS ABOUT THE "NO FLY" LIST AND OTHER WATCHLISTS EXIST**

14 23. The government's repeated use of the "no fly" list and watchlists as well as the  
 15 public's concern about such lists has been chronicled in a variety of publications. *See, e.g.*, Ira  
 16 Berkow, "Rower with Muslim Name Is an All-American Suspect," *New York Times* (Feb. 21,  
 17 2003); Alan Gathright, "U.S. Evolving into Big Brother Society, ACLU Says," *San Francisco*  
 18 *Chronicle* (Jan. 16, 2003); Dave Lindorff, "The No-Fly List; Is a Federal Agency Systematically  
 19 Harassing Travelers for Their Political Beliefs?" *In These Times* (Dec. 23, 2002); Robyn Blumner,  
 20 "If Your Name Gets on the Wrong List, You're in Trouble," *St. Petersburg Times* (Dec. 22, 2002);  
 21 Robyn Blumner, "So You Want to Get Your Name Off That List . . .?" *The Milwaukee Journal*  
 22 *Sentinel* (Dec. 23, 2002); Alan Gathright, "ACLU Seeks Answers to 'No-Fly' Lists," *San*  
 23 *Francisco Chronicle* (Dec. 13, 2002); Ann Davis, "Lists That Bar Air Passengers Draw Scrutiny,"  
 24 *Wall Street Journal* (Dec. 12, 2002); Ann Davis, "Post-Sept. 11 Watch List Acquires Life of Its  
 25 Own," *Wall Street Journal* (Nov. 19, 2002); Dave Lindorff, "Grounded: A Federal Agency  
 26 Confirms That it Maintains an Air Travel Blacklist of 1,000 People," *salon.com* (Nov. 15, 2002);  
 27 Jack Chang, "Liberties Tested After September 11," *Contra Costa Times* (Nov. 14, 2002); Bob  
 28 Egelko, "ACLU's TV Ads Make Issue of Bush Security Measures," *San Francisco Chronicle*



(Oct. 17, 2002); Steve Jacob, "Vacation Interrupted," *Forth Worth Star-Telegram* (Oct. 11, 2002); Editorial, "Common Sense Checks In," *Baltimore Sun* (Oct. 8, 2002); Charles Osgood, "Some Activists Names Appear on FBI No-Fly List," *CBS News* (Oct. 7, 2002); Bill Whitaker, "Peace Activists Claim the Government Is Treading on Their Civil Rights," *CBS News* (Oct. 6, 2002); Editorial, "A 'No-Fly Zone' in Our Country?" *San Francisco Chronicle* (Sept. 30, 2002); Alan Gathright, "No-Fly Blacklist Snares Political Activists," *San Francisco Chronicle* (Sept. 27, 2002); "Retired Coast Guard Commander Finds Himself on FBI List," *Associated Press* (Sept. 11, 2002); Sean Holstege, "Some Travelers a Threat to Country in Name Only," *Oakland Tribune* (Sept. 5, 2002); Matthew Rothchild, "The No Fly List; People in the U.S. Who Are Considered Security Risks Are Not Allowed Normal Access to Air Travel," *The Progressive* (Jun. 1, 2002); Ralph R. Ortega, "He's Told Name Just Won't Fly," *New York Daily News* (May 21, 2002); Ryan O'Rourke, "Activists Detained; Government Afraid of Those Who Disagree," *Milwaukee Journal Sentinel* (Apr. 26, 2002). True and correct copies of these articles are attached as Exhibit 31.

24. In letters written to their Senators and Representatives, dozens of air passengers across the country have complained about their experiences with the "no fly" list. See [www.epic.org/privacy/airtravel/foia/watchlist\\_foia\\_analysis.html](http://www.epic.org/privacy/airtravel/foia/watchlist_foia_analysis.html) (providing links to letters of air travelers).

**RECORDS ABOUT THE "NO FLY" LIST AND OTHER WATCHLISTS EXIST OR REASONABLY SHOULD EXIST**

25. On March 12, 2003, through counsel, Plaintiffs made a second records request to SFO under the San Francisco Sunshine Ordinance and the California Public Records Act and sought access to "documents referring or relating to the questioning, stopping, handling, investigation, or detention of individuals believe to be on a federal 'no fly' list or other watchlist at SFO." Mr. Martin, on behalf of SFO, responded on March 21 and requested an additional 14 days in which to respond to this request ("March 21 Martin letter"). Accompanying the letter that was faxed by Mr. Martin to counsel was a two-page document that appears to identify individuals detained at one terminal at SFO on selected days in September of 2001 because their names appeared on a "no fly" list. On information and belief, Plaintiffs allege that Defendants FBI and

1 TSA currently maintain records of the type inadvertently released by SFO officials regarding “no  
 2 fly” lists or watchlists in use at SFO and in airports throughout the nation. In an abundance of  
 3 caution, Plaintiffs have not attached a copy of the two-page document as the Court has not yet  
 4 decided whether to require the government to release the records requested by Plaintiffs. A true  
 5 and correct copy of the letter response alone is attached as Exhibit 32.

6 26. On April 8, 2003, SFO released nearly 400 pages of incident reports documenting  
 7 instances in which air passengers were stopped or questioned at SFO in connection with the “no  
 8 fly” list and other watchlists. In the overwhelming majority of these instances, passengers were  
 9 erroneously stopped and their names were found not to match the “no fly” or other watchlist. The  
 10 incident reports were different in form and content than the documents accompanying the March  
 11 21 Martin letter. Attached as Exhibit 33 is a chart summarizing the incident report documents  
 12 released by SFO. Upon information and belief, Plaintiffs allege that Defendants FBI and TSA  
 13 currently maintain records similar to the incident reports already released by SFO officials  
 14 regarding “no fly” lists or watchlists in use at SFO and in airports throughout the nation.

15 27. In addition, in a January 17, 2003 letter sent by Michael D. Robinson, Associate  
 16 Under Secretary for Aviation Security Operations of the TSA in Washington, D.C. to Mr. and  
 17 Mrs. Dennis Musante of Alamo, California, the TSA conceded that it “does require each airline to  
 18 use a ‘Watchlist’ comprised of names provide by Federal law enforcement agencies. When an  
 19 airline has a reservation with a passenger name that matches or is similar to one on the ‘Watchlist’  
 20 the airline must follow certain established procedures to clear the individual.” A true and correct  
 21 copy of this letter, which, on information and belief, was provided to the ACLU-NC, is attached as  
 22 Exhibit 34.

23 28. The existence of the “no fly” list is also confirmed by the very limited information  
 24 that is available to the public. According to this information, the TSA maintains at least two  
 25 watchlists: the “no fly” list and a “selectee” list that establishes which air passengers are singled  
 26 out for additional security measures. The government provides the names on these two lists to air  
 27 carriers like ATA, and air carriers subsequently store the list information in their own computer  
 28 systems. *See* [www.epic.org/privacy/airtravel/foia/watchlist\\_foia\\_analysis.html](http://www.epic.org/privacy/airtravel/foia/watchlist_foia_analysis.html).

29. Upon information and belief, Plaintiffs allege that Defendants FBI and TSA have procedures and protocols regarding, *inter alia*, which individuals are on watchlists prepared by their government, how individuals' names may be removed from such lists, and restrictions on the government's and air carriers' use of such watchlists.

**PLAINTIFFS HAVE EXHAUSTED THEIR ADMINISTRATIVE REMEDIES**

30. By the terms of 5 U.S.C. § 522(a)(6)(A)(i), the time in which Defendant TSA was required to respond to Plaintiffs' November 14th records requests has expired. Further, by the terms of 5 U.S.C. § 522(a)(6)(A)(ii), the time in which Defendant TSA was required to have made a determination as to Plaintiff ACLU-NC's appeal of TSA's determination that Plaintiff ACLU-NC does not qualify as a representative of the news media for purposes of waiving TSA's search and review fees has also expired.

31. By the terms of 5 U.S.C. § 552(a)(6)(C), with respect to Defendant TSA, Plaintiffs are deemed to have exhausted their administrative remedies by reason of Defendant TSA's failure to meet the statutory time limits.

32. By the terms of 5 U.S.C. § 552(a)(6)(C), with respect to Defendant FBI (San Francisco office and Washington, D.C. headquarters), the agency responses to Plaintiffs' appeals were due 20 days from receipt of those appeals. Although this time has elapsed, Plaintiffs have yet to receive responses. Plaintiffs are deemed to have exhausted their administrative remedies by reason of Defendant FBI's failure to meet the statutory time limits.

33. Plaintiffs Adams and Gordon have also exhausted their administrative remedies as to Defendants TSA and FBI as regards their Privacy Act requests. *See* 5 U.S.C. § 552a(g)(1)(B).

34. Defendants have wrongfully withheld the records sought by Plaintiffs. Further, Defendants have asserted no statutory basis for withholding any of the records sought by Plaintiffs. There is a strong public interest in the disclosure of those records sought. Defendants' refusal to release responsive documents that are believed to be within their custody and control constitutes an abuse of these federal agencies' discretion.

**FIRST CAUSE OF ACTION**

**Violation of FOIA for Failure to Make Promptly Available  
the Records Sought by Plaintiffs' Requests**

35. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 34 above, inclusive.

36. Plaintiffs have a legal right under FOIA to obtain the agency records they requested on November 12, 2002 and there exists no legal basis for Defendants FBI and TSA's failure to make available such records.

37. Defendants FBI and TSA's failure to make promptly available the records sought by Plaintiffs' requests violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable regulations promulgated thereunder.

**SECOND CAUSE OF ACTION**

**Violation of Privacy Act for Failure to Allow Access to Records**

38. Plaintiffs Gordon and Adams repeat and reallege the allegations contained in paragraphs 1 through 37 above, inclusive.

39. Plaintiffs Gordon and Adams have a legal right under the Privacy Act to gain access to agency records that are indexed or maintained under their names in the "no fly" list or any other system of records by Defendants FBI and TSA.

40. Defendants FBI and TSA's failure to timely make available to Plaintiffs Adams and Gordon access to records indexed or maintained under their names or identifying information violates the Privacy Act, 5 U.S.C. 552a(d)(1), and applicable regulations promulgated thereunder.

**THIRD CAUSE OF ACTION**

**Violation of FOIA for Defendant TSA's Failure to Classify Plaintiff ACLU-NC as a  
Representative of the News Media for Purposes of Assessing Processing Fees**

41. Plaintiff ACLU-NC repeats and realleges the allegations contained in paragraphs 1 through 40 above, inclusive.

42. Plaintiff ACLU-NC has a legal right to be classified as a "representative of the news media" for purposes of assessing processing fees associated with Plaintiffs' FOIA requests.

DAVIS WRIGHT TREMAINE LLP

43. Defendant TSA's failure to classify Plaintiff ACLU-NC as a "representative of the news media" for purposes of assessing processing fees associated with Plaintiffs' FOIA requests is in violation of 5 U.S.C. 552(a)(4)(A)(ii)(II) and applicable regulations promulgated thereunder.

**WHEREFORE**, Plaintiffs request the Court award them the following relief:

1. Declare that Defendants FBI and TSA violated FOIA and the Privacy Act;
2. Declare that Plaintiff ACLU-NC qualifies as a "representative of the news media" for purposes of assessing processing fees associated with Plaintiffs' FOIA requests to Defendant TSA;
3. Order Defendants FBI and TSA to immediately disclose the requested records in their entireties and make copies available to Plaintiffs;
4. Order Defendants FBI and TSA immediately to grant Plaintiffs Adams and Gordon access to records indexed or maintained under their names or identifying information in the "no fly" list or any other system of records maintained by Defendants FBI and TSA;
5. Order Defendant TSA to classify Plaintiff ACLU-NC as a "representative of the news media" for purposes of assessing processing fees associated with Plaintiffs' FOIA requests to Defendant TSA;

///

///

///

DAVIS WRIGHT TREMAINE LLP

1  
2 6. Award Plaintiffs their reasonable costs and attorneys' fees;

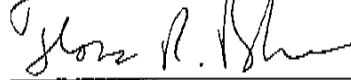
3 7. Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and

4 8. Grant such other relief as the Court may deem just and proper.

5 DATED this 21<sup>st</sup> day of April, 2003.

6 Respectfully submitted,

7 DAVIS WRIGHT TREMAINE LLP

8 By: 

9 THOMAS R. BURKE  
10 SUSAN E. SEAGER

11 AMERICAN CIVIL LIBERTIES UNION  
12 FOUNDATION OF NORTHERN CALIFORNIA

13 By: \_\_\_\_\_  
14 JAYASHRI SRIKANTIAH

15 Attorneys for Plaintiffs  
16 Rebecca Allison Gordon,  
17 Janet Amelia Adams and  
18 American Civil Liberties Union Foundation of  
19 Northern California  
20  
21  
22  
23  
24  
25  
26  
27  
28

DAVIS WRIGHT TREMAINE LLP